

REMARKS

After entry of this Response to Restriction Requirement, claims 1-30 are pending in the application. In the Office Action dated September 11, 2003, the Examiner imposed a Restriction Requirement between claims 1-9, drawn to an apparatus classified in Class 324, Subclass 96; claims 10-18, drawn to a method classified in Class 324, Subclass 96; and claims 19-30 drawn to an apparatus classified in Class 324, Subclass 96.

Applicants, through its attorneys, elect claims 19-30 drawn to an apparatus, classified in Class 324, Subclass 96 with traverse. The Restriction Requirement is traversed on the grounds that the inventions are not shown to be distinct from one another as evidenced by the identical classification in Class 324, Subclass 96 for each of the groups of claims identified by the Examiner. Since the Examiner is required to search the same Class and Subclass for each group of claims, there is no undue burden on the Examiner to search the various language and claim formats setting forth a single invention. In particular, claim 22 which depends from claim 19 specifies that the deriving means includes compensating for temperature variations based on band-gap modulation of the output optical signal from the temperature dependent semi-conductor probe, where claim 1 recites that band-gap modulation means is provided for compensating the sensed characteristic of the output optical signal containing electric field information for corruption due to temperature variations. In each case, the claimed invention is for obtaining sensed characteristics of the output optical signal independent of temperature variations. The Examiner's statement that the sub-combination has separate utility, such as determining electric field information that is dependent on temperature variations is not understood. The claimed invention senses a characteristic of the output optical signal containing electric field information (which is dependent on temperature variations), and must be compensated for corruption due to temperature variations in order to derive the sensed characteristic independent of temperature variations. The inventions are not distinct, since they have not acquired a separate status in the art and since each of the group of claims is classified in the same Class and Subclassification. Where, as disclosed in the present application, the inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. §121 is never proper (see MPEP §808.02). The Examiner, in order to establish reasons for insisting on restriction, must show by appropriate explanation one of the following: (a) separate classification thereof (which is not the case here); (b) a separate status in the art when they are classifiable together (no

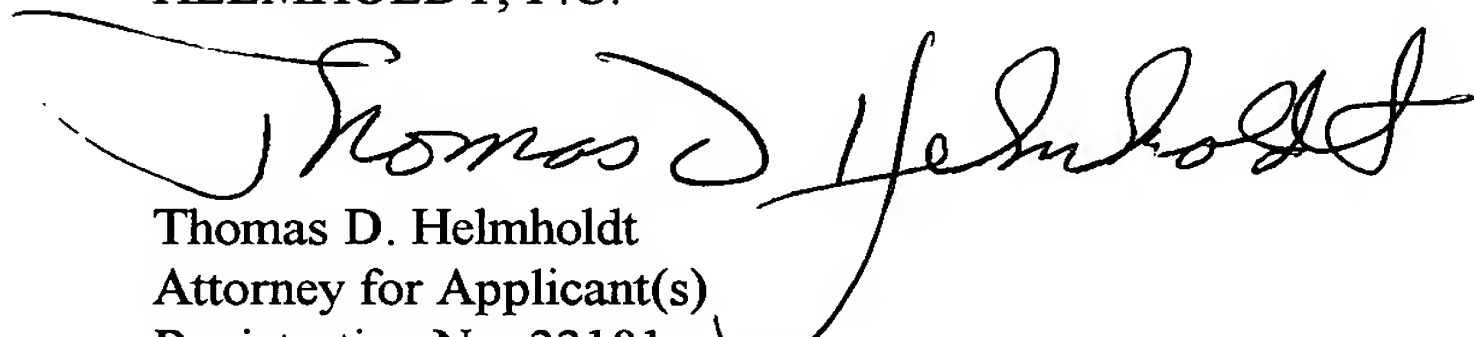
patents have been cited by the Examiner which evidence a separate status, or a separate field of search); and (c) a different field of search (which has not been shown here). Where the classification and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions. See MPEP §808.02. It is further pointed out to the Examiner that Group I and Group II as identified by the Examiner are related to a claim to "means" for practicing a process linking proper apparatus and process claims as set forth in MPEP §809.03.

Therefore, restriction between Group I and Group II is also improper. Where linking claims exist, the Restriction Requirement should specify which claims are considered to be linking. If a linking claim is allowed, the Examiner must thereafter examine claims to the non-elected inventions that are linked to the elected invention by such allowed linking claim. See MPEP §809.04. The linking claim should not be associated with any one of the linked inventions since such claims must be examined with any one of the linked inventions that may be elected. See MPEP §814. This fact should be clearly stated in the Restriction Requirement.

Reconsideration of the Examiner's Restriction Requirement is requested.

Respectfully submitted,

YOUNG, BASILE, HANLON, MacFARLANE, WOOD &
HELMHOLDT, P.C.



Thomas D. Helmholdt
Attorney for Applicant(s)
Registration No. 33181
(248) 649-3333

3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107

Dated: October 13, 2003
TDH/cmp